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No. 217

IN THE

Supreme Court of the United States

OCTOBER TERM, 1932.

GUARANTY TRUST COMPANY, EXECUTOR,
Appellant,

vs.

WILLIAM H. BLODGETT, TAX COMMISSIONER,
Appellee,

APPEAL FROM THE SUPERIOR COURT OF FAIRFIELD COUNTY, CONNECTICUT.

MOTION TO AFFIRM AND BRIEF IN SUPPORT OF MOTION.

ERNEST L. AVERILL,
Deputy Attorney General,

FARWELL KNAPP,
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Attorneys for Appellee

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HARTFORD, CONN.

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MOTION TO AFFIRM.

Comes now the Appellee in the above entitled cause, by his counsel of record, and moves that the decision below be affirmed, on the ground that the questions on which the decision of the cause depends are so unsubstantial as not to need further argument.

Respectfully submitted,

WILLIAM H. BLODGETT,
Tax Commissioner, Appellee,

By ERNEST L. AVERILL,
Deputy Attorney-General,
FARWELL KNAPP,
Assistant Tax Commissioner,
His Attorneys.

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BRIEF IN SUPPORT OF MOTION

I. STATEMENT OF FACTS.

This case involves the power of the State of Connecticut to levy a succession tax upon the transfer by irrevocable trust deed, executed by a resident decedent, of certain securities, whereby the decedent reserved to herself the income thereof for life, with remainders over after her death; the trust deed having been executed after the enactment and effective date of the state statute purporting to tax such a transfer as a "gift intended to take effect in possession or enjoyment at

the death" of the donor. The case is reported below in 114 Conn. 207.

II. NO QUESTION CAN ARISE AS TO THE MEANING OR CONSTRUCTION OF THE TAXING STATUTE.

The Court below held that the legislature intended, by the words used in the statute, to tax such a transfer as the one in the case at bar. 114 Conn. 218.

It has been held many times by this Court that it will adopt and consider itself bound by the construction of the meaning of a state statute, made by the highest court of a state.

It would serve no useful purpose to cite all the cases to this effect. It is believed that the following two cases, both involving taxation, are typical:

In Stebbins v. Riley, 268 U. S. 137 (1925), this Court said at page 146,

> "Here the construction of the taxing act is not open to question. Its meaning and application have been determined by the Supreme Court of of California and by its determination we are bound".

In Keith v. Johnson, 271 U. S. 1 (1926), this Court said, at page 8,

> "This Court will follow the decisions of the state courts as to the meaning and proper application of the state transfer tax law, any expressions in its earlier decision to the contrary notwithstanding".

III. IT HAS ALREADY BEEN DECIDED BY THIS COURT THAT A STATE HAS POWER TO TAX SUCH A TRANSFER AS THIS PROSPECTIVELY.

The only remaining question, therefore, is whether the imposition of the tax in the case at bar would offend against the due process clause, the equal protection clause, or the contract clause of the Constitution of the United States. In other words, has a state power constitutionally to levy such a tax upon such a transfer?

Such power has been recognized by this Court in *Nickel v. Cole,* 256 U. S. 222 (1921). See also *Keeney v. New York,* 222 U. S. 525 (1912).

No question of retroactivity is involved in the case at bar, for the transfer was executed long after the passage and effective date of the taxing act. In *Coolidge v. Long,* 282 U. S. 582 (1931), Mr. Justice Butler, writing for the majority of this Court, said (p. 596):

> "Undoubtedly the State has power to lay such an excise upon property so passing after the taking effect of the taxing Act".

These words were directed to exactly the same statutory phrase as is here in question, and to an irrevocable transfer in trust wherein the settlor reserved to himself the life use—that is, they are exactly applicable to the case at bar.

In view of the above, the Appellee respectfully urges that no substantial question exists in the case at bar which requires further argument: and that,

consequently, the motion to affirm the decision below should be granted.

Respectfully submitted,

WM. H. BLODGETT, *Tax Commissioner, Appellee*

By ERNEST L. AVERILL,
Deputy Attorney-General

FARWELL KNAPP,
Assistant Tax Commissioner
His Attorneys